

THE REGIONAL MUNICIPALITY OF YORK  
POLICE SERVICES BOARD

REPORT OF THE CHIEF OF POLICE  
22 OCTOBER 2008

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**Forfeited Offence-Related Property / Proceeds of Crime /  
Civil Remedies for Illicit Activities (CRIA)**

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**RECOMMENDATION**

1. That the Board receive this report.

**SYNOPSIS**

Pursuant to the Board's request, this report outlines the methods available to law enforcement and government to seize cash and assets that are used, or gained by criminals through their involvement in illicit activities. It describes how the seized assets are managed, converted to cash and distributed to the Federal and Provincial Governments in accordance with the Forfeited Property Sharing Regulations and the *Civil Remedies Act*.

**FINANCIAL IMPLICATIONS**

The amount of cash and assets turned over to the Seized Property Management Directorate (SPMD) by York Regional Police for the years ending March 31, 2006, March 31, 2007 and March 31, 2008 is \$2,102,000. In the same three year period we received approximately \$105,000 from the Province of Ontario for RIDE funding from the proceeds of crime fund.

**BACKGROUND**

The Seized Property Management Directorate (SPMD) of Public Works and Government Services Canada (PWGSC) manages assets seized or restrained under specific sections of the *Criminal Code*, the *Controlled Drugs and Substances Act* and the *Proceeds of Crime (Money-Laundering) and Terrorist Financing Act*. Assets that are

forfeited to SPMD are sold through public sales and auctions. The revenue is added to the total amount of cash forfeited to SPMD.

The total amount of assets and cash forfeited to SPMD are assessed by the Attorney General of Canada who determines how the funds are distributed between the Federal and Provincial Governments in accordance with the *Forfeited Property Sharing Regulations*.

No portion of these funds is distributed directly to York Regional Police or to any other police service involved in the seizure of the goods. York Regional Police can only access these funds through Provincial government grant opportunities managed by the Ministry of Community Safety and Correctional Services.

Offence-related property is defined in the *Criminal Code* as any property, within or outside of Canada,

- by means or in respect of which an indictable offence under this Act is committed,
- that is used in any manner in connection with the commission of an indictable offence under this Act, or
- that is intended for use for the purpose of committing an indictable offence under the Act;

Proceeds of crime is defined in the *Criminal Code* as any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of:

- the commission in Canada of a designated offence, or
- an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

Offence-related property and proceeds of crime seized by York Regional Police over the past three years include residences used in the cultivation and/or production of illicit drugs and the production of counterfeit documents, vehicles being operated by impaired drivers and drug traffickers, and an airplane used to traffic drugs.

The following steps outline the investigative and court process that result in offence-related property and proceeds of crime being forfeited to the Seized Property Management Directorate:

- Offence-related property and proceeds of crime are seized incident to arrest or under the authority of a special search warrant. Police then obtain a management order or a restraint order authorized by a judge or justice.
- Custody of seized assets is then turned over to the SPMD, who engages the appropriate professionals to manage, maintain and safeguard the assets until the legal proceedings are concluded.
- If the accused is found guilty, sentencing may include the forfeiture of the seized assets. If there are no appeals, SPMD begins the process of disposing of the assets. Normally, SPMD utilizes public sales and auctions to ensure market value is obtained. Proceeds of these funds are then distributed by the Attorney

General of Canada to the Federal and Provincial Governments in accordance with the *Forfeited Property Sharing Regulations*.

For federal proceeds of crime funds, monies returned to the Province of Ontario are split so that the Ministry of Community Safety and Correctional Services (MCSCS) receives 75 percent and the Ministry of the Attorney General (MAG) receives 25 percent. For successful provincial proceeds of crime prosecutions, MCSCS receives 60 percent and MAG 40 percent.

When law enforcement is unable to seize assets pursuant to a criminal investigation, a referral can be made to Civil Remedies for Illicit Activities (CRIA). This process is described below, however, it should be noted that CRIA may conduct their own parallel investigation from the onset and intervene should an issue arise that would affect criminal forfeiture.

### **Civil Forfeiture - Ontario Civil Remedies Act (2001)**<sup>1</sup>

The *Ontario Civil Remedies Act (2001)* was the first of its kind in Canada. It permits a civil court, at the request of the Attorney General, to freeze, take possession of and forfeit to the Crown, property acquired through or likely to be used for unlawful activity. Property includes all types of assets such as real estate, cars and cash.

Civil Remedies for Illicit Activities (CRIA) is a government body that enforces the *Ontario Civil Remedies Act (2001)*. In Ontario, civil forfeiture legislation focuses solely on the connection between property and unlawful activity and is **not** dependant on any criminal charges or convictions. The standard of proof required for civil forfeiture is the same as in all civil suits, a balance of probabilities.

There are four types of civil cases that the Attorney General of Ontario can bring under the *Ontario Civil Remedies Act (2001)*:

- In a **proceeds** case, the Attorney General must establish that property was acquired as the result of unlawful activity. If proven, this property may be forfeited to the Crown by an order of the Ontario Superior Court of Justice.
- In an **instrument of unlawful activity** case, the Attorney General must establish that the property in question is likely to have been used to engage in unlawful activity that could result in the acquisition of other property, including money, or in serious bodily harm to any person. Property in this context means real or personal property and includes any interest in property used to facilitate an unlawful activity. Where the Attorney General establishes that the property is an instrument, often from past use of the property, in an unlawful activity, the Ontario Superior Court of Justice may order that the property be forfeited to the Crown.
- In a **conspiracy** case, the Attorney General must establish that two or more people conspired to engage in unlawful activity where they knew or ought to have known that the activity would likely result in injury to the public. The Ontario

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<sup>1</sup> Civil Forfeiture in Ontario 2007, an Update on the *Civil Remedies Act*, 2001, Ministry of the Attorney General, Ontario.

Superior Court of Justice may award damages for that injury or issue preventative orders.

- **Unlawful activities related to road safety** involves any vehicle that was or is likely to be engaged in vehicular unlawful activities (Impaired Driving, Fail to Comply with Breath Demand, Impaired Causing Bodily Harm or Death, Driving while Suspended for one of these offences) and is owned or is in the care, control or possession of a person whose driver's license has been suspended under the *Highway Traffic Act* for vehicular unlawful activities two or more times within the past ten years (new as of February 2008).

The Superior Court of Justice must approve all steps in a civil forfeiture proceeding under the Act. The *Civil Remedies Act* authorizes the court to order the preservation of money or property to prevent it from being sold or mortgaged. If the government then proves its case, the court can order the money or property to be forfeited to the Crown. The onus is on the government to prove its case.

The process for civil forfeiture begins when an institution designated in the Act, such as a police service or government ministry, submits a case to the reviewing authority, an independent Crown counsel in the Ministry of the Attorney General. Counsel reviews the case and decides whether the statutory criteria in the *Civil Remedies Act* have been met. The case information is then forwarded to the Ministry's CRIA office which is responsible for enforcing the Act. CRIA lawyers bring proceedings to court on behalf of the Attorney General.

CRIA's Director of Asset Management – Civil is responsible for taking possession of and preserving, managing, disposing of, or otherwise dealing with all property under preservation or forfeited to the Crown.

Forfeited property is converted to cash and deposited into the *Civil Remedies Act* special purpose account. The act allows for disbursement as follows:

- **Victim Compensation** – Victims of the unlawful activity that has given rise to forfeiture may submit a claim for compensation.
- **Cost Recovery** – Funds may be used for cost recovery to the Crown. Although the Crown is entitled to recover its costs first, the practice to date has been to compensate victims first.
- **Grants** – Funds remaining after cost recovery and victim compensation may be disbursed from grants for programs to assist victims or prevent victimization. Organizations eligible for grants are designated by the court, including law enforcement agencies and Ontario government ministries, boards and commissions. These institutions must meet the established criteria and submit a project proposal outlining how the grant will assist victims of unlawful activities or prevent victimization.

**Cash and Assets Forfeited to the  
Seized Property Management Directorate (SPMD) by York Regional Police**

In 2006, 2007 and 2008, York Regional Police turned over a total of \$2,102,000 in cash and assets to SPMD under the authority of a court order. During the same period, York Regional Police has received \$78,543 through the annual Ride Grant Program and \$300,000 to the Automated Palm and Fingerprint Identification System capital project.

The following chart identifies the number of forfeiture cases York Regional Police forwarded to SPMD in 2006, 2007 and 2008, as well as the value of cash seized by York Regional Police and forfeited to SPMD, including cash generated from assets sold by SPMD, and the total amount of funding available to be shared between the Federal and Provincial governments as a result of York Regional Police cases.

<b>YORK REGIONAL POLICE OFFENCE-RELATED PROPERTY / PROCEEDS OF CRIME FORFEITURES</b>			
<b>Year Ending</b>	<b>Number of Cases</b>	<b>Value of Forfeitures</b>	<b>Funds Available to Federal / Provincial Governments</b>
March 31, 2006	49	\$685,000	\$511,000
March 31, 2007	240	\$317,000	( \$114,000)
March 31, 2008	182	\$1,100,000	\$795,000
<b>TOTAL</b>	<b>471</b>	<b>\$2,102,000</b>	<b>\$1,192,000</b>

The year ending March 31, 2007, indicates a negative balance of \$114,000. This is a result of expenses incurred by SPMD for the management of offence-related property and proceeds of crime. These expenses may include, but are not limited to, storage fees, transportation expenses and the costs associated to liquidating seized assets.

The seizure and subsequent forfeiture of offence-related property and proceeds of crime is an effective means of disrupting organized crime, limiting the profits associated to criminal acts and discouraging recidivist impaired drivers from re-offending. The Canadian Association of Chiefs of Police (CACP) and the Ontario Association of Chiefs of Police (OACP) are equally supportive of the federal and provincial legislation.

As far back as 2002 the CACP has drawn attention to the utilization of funding from proceeds of crime investigations. The resolution at the time dealt with a national drug enforcement strategy and read:

That the CACP calls upon the Prime Minister of Canada, the Minister of Justice and Attorney General and the Solicitor General of Canada, in conjunction with their Provincial counterparts, to take a leadership role in creating and funding a co-ordinated national initiative that focuses on the significant threat to public health and safety posed by clandestine marihuana grow operations. Such funding could be supplemented in part by the dedication of fines and Proceeds of Crime Forfeitures from drug convictions, directly to policing drug enforcement initiatives, committed to mitigate the production, distribution, importation and exportation of cannabis products and derivatives.

Since that resolution was made, the CACP has been pursuing initiatives intended to facilitate a more equitable and strategic disposition of proceeds of crime and those funds be dedicated directly back to fight organized crime at the local and national level.

In June of 2005, the OACP endorsed a resolution that read:

Therefore be it resolved that the Ontario Association of Chiefs of Police calls on the Ontario Government to provide appropriate annual funding from the province's Proceeds of Crime Fund that will ensure the on-going development of asset forfeiture among Ontario police services.

At a recent OACP Asset Forfeiture Sub-Committee meeting, members noted that the various legislations related to asset forfeiture were complex and requires dedicated resources to manage appropriately. The Sub-Committee is also advocating that the OACP be consulted by the provincial government before finalizing the Allocation of Funds in Ontario agreement which is currently in draft form. One of the main concerns is the length of time it takes to process property and distribute the proceeds. Costs associated with warehousing assets escalate each day that they are not processed. These administrative costs are taken from the overall proceeds which results in less funding being directed to police services through the grant programs.

The recent increase in funding associated with the RIDE program is an excellent example of putting the proceeds of crime to work in the local community. In order to ensure that a program like RIDE can continue, there needs to be assurances that funding is accessible and sustainable. The same rationale applies to funding from the Criminal Intelligence Service of Ontario (CISO). Allocations of funds from CISO are critically important in the continuing efforts to disrupt organized crime. So long as police organizations like York Regional Police are engaged in asset forfeiture investigations the resultant funds need to be made available in an equitable and expedient manner. When re-invested in police efforts to combat crime and deal appropriately with victims of crime, the community benefits.

The Canadian Association of Police Boards addressed the proceeds of crime issue with two resolutions in 2004. The resolutions read:

THAT the Canadian Association of Police Boards urge the federal government to amend the *Forfeited Property Sharing Regulations* to include a cost recovery component to the local jurisdiction or municipality;

AND FURTHER BE IT RESOLVED THAT the Canadian Association of Police Boards urge the federal government to revisit the provincial Memorandums of Understanding to incorporate a cost recovery clause mandating reimbursement of costs to the local jurisdiction or municipality.

The Ontario Association of Police Services Boards has not yet developed a position with respect to proceeds of crime, asset forfeiture or offence related property. As the Province is drafting their Allocation of Funds in Ontario agreement, it would be helpful to have the support of these different governance associations. The added support of the Police Services Board(s) calling for the expedient allocation of sustainable funding would enhance the position of the OACP when discussing with the Province the value of the

program and the importance of the contribution to public safety and security made possible by having access to the funding.

Armand P. La Barge, O.O.M.  
Chief of Police

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